

REMARKS

This amendment and these remarks respond to the Office Action dated November 3, 2004. Applicant petitions for a three month extension of time to respond to the outstanding Office Action, and separate Petition is also submitted herewith.

Election/Restrictions

Claims 26-33 had been previously elected for consideration in the present case. Claims 34-41 have been cancelled hereby, without prejudice; and Applicant reserves the right to pursue these and/or similar claims in continuing cases.

Office Action's Rejection under 35 U.S.C. Section 112

Claims 26-33 were rejected in the Office Action under Section 112, second paragraph, as being indefinite. More particularly, in Claim 26, the recitation of "rail" was said to be "vague and indefinite" because the intended meaning of this term is unclear. Applicant submits that the term "rail" is definite and sufficiently clear to support the claim language. It is clear by reference to the specification and drawings that the component referred to as a "rail 24" could have been referred to as a rail, a bar, a slat, a strip or any number of other terms. The Applicant, in his translation from the original German priority application, settled on the term "rail", and whether or not it is perceived by others to be the exact perfect choice of word to be used, it is argued that "rail" is an acceptable term and its meaning is clearly understood by the context within the specification and with reference to the drawings. The term "rail" in the claims finds specific support within the specification, in the context of the specification and drawings, and is not "repugnant to" the usual meaning of the term. According to a dictionary (Reader's Digest Illustrated Encyclopedic Dictionary; Funk & Wagnalls New Comprehensive International Dictionary of the English Language) "rail" has numerous meanings, including but not limited to: "a bar ... placed, usually horizontally, some distance above the ground and supported by a vertical posts or a solid structure ..." or "a bar, usually of wood or iron, resting on supports ...", respectively. Thus, Applicant's selection of the word "rail" in his translated specification to identify that member positioned above an object holder with another structure (e.g., stretchable

sheet) therebetween is believed to be not indefinite nor vague. Applicant requests withdrawal of this rejection.

The Office Action states that the phrase "duct being defined by the object holder and the stretchable sheet and the rail" is also vague and indefinite. Applicant traverses this rejection, believing that the language as originally stated is sufficiently definite and clear. Nonetheless, Applicant has chosen to amend Claim 26 such that it now includes the recitation of a "duct" being *defined between said object holder and said stretchable sheet*. It is submitted that this recitation is clear and definite and Applicant requests withdrawal of the related rejection.

The Office Action further states that the recitation of the "rail being mounted on the stretchable sheet to define the geometry of the duct" is vague and indefinite because Applicant has not recited in what manner these elements define the geometry of the duct. Applicant respectfully submits that the language of the claim is clear and readily understood by reference to the specification and the language of the claims. Nonetheless, Applicant has amended the claim. The meaning of "geometry" taken from Reader's Digest Illustrated Encyclopedic Dictionary includes the definitions "configuration"; "surface shape"; and the term "configuration" is further defined as an "arrangement of parts or elements; the form of a figure as determined by the arrangement of its parts or components; outline, contour." It is perfectly clear from the specification and Claim 26 that a duct must have a geometry of some sort, that is, the duct is clearly understood to have a surface shape, configuration, form, outline or contour. The claim makes it clear that the duct is defined by at least the object holder and the stretchable sheet and in order to define the geometry of this duct, the rails are placed on top of the stretchable sheet (for example, as shown in the drawings as one embodiment) thereby cooperating with other components to define the shape or geometry of the duct. Applicant respectfully requests a withdrawal of this rejection.

Office Action's Rejection under 35 U.S.C. § 102

Claims 26-28 and 33 were rejected by the Office Action under 35 U.S.C. § 102(b) as being anticipated by Andreyskiy, et al. Applicant respectfully traverses the rejection and the related interpretations. In justifying this rejection, the Office Action recites that the Andreyskiy, et al. art comprises a reaction chamber having a cover formed of a deformable material, and the

Office Action states that "the deformable cover inherently contacts the sides of the object holder, ... [and] the contact of the deformable cover to the sides of the object holder are sufficient to meet the limitation of a rail." Applicant respectfully submits that this interpretation of the prior art does not meet the limitations of the Claim. Claim 26 requires an object holder and at least one rail and a stretchable sheet disposed between said object holder and at least one rail. The structure as recited in the Office Action, even if it is an accurate interpretation of Andreviskiy, does not show that the stretchable sheet is between the object holder and a rail. By its own admission, the Office Action states that the prior art shows a rail between the object holder and the stretchable sheet. This does not teach or meet the limitations of Claim 26. Whatever the "rail" is called, a splint, a bar, a rod, ..., or "simply interpreted as a rod-like support structure," it must still be positioned in accordance with the limitations of the claim. The prior art does not teach such positioning or structural relationship. Applicant's invention, as recited in Claim 26, while simple in its componentry, should not be underestimated in its significance. By way of example, it would seem that the prior art delivery devices include "ducts" of fixed geometry (size, shape) and a sheet or cover simply covers the preexisting duct. The duct is already defined. The invention as claimed in Claim 26 provides in at least one embodiment for the use of an object holder which has no particular definition and, for example, could be simply a flat plate. There is no predefined or fixed duct of any geometry whatsoever. A stretchable sheet is placed on top of the object holder and together, the object holder and the stretchable sheet define at least in part the walls of the duct of the delivering device. However, this duct has no particular geometry, being simply a stretchable sheet lying on top of a flat plate. A fluid flowing between the object holder and the sheet has no flow boundary. Finally, in accordance with Claim 26 of the present invention, the duct is given geometry (outline, form, shape) by the cooperative effects of at least one rail mounted on the stretchable sheet. In this way, using the present invention, a target structure may be placed on the object holder (for example, a flat plate) and the stretchable sheet placed over the target structure and finally a duct geometry is defined after placement of the sheet on the target structure. It is seen that the duct is created "on the fly," as needed. The need for pre-formed and pre-sized ducts and target containers is rendered unnecessary and inefficient.

In light of this extreme distinction between the present invention of Claim 26 and the Andrevskiy, et al. reference, Applicant respectfully requests withdrawal of the stated Section 102 rejection.

Regarding claim 33, it is specifically noted that this claim further distinguishes over the prior art, and serves to emphasize the distinction of Claim 26 over the prior art. The invention as claimed in Claim 33 comprises the object holder on top of which is the stretchable sheet disposed between the at least one rail and the object holder, and additional stretchable strip disposed between the object holder and the stretchable sheet. There is no prior art that shows or, in combination with other references, renders this combination obvious. The structure of claim 33 comprises a duct, as that of claim 26, which is selectively definable and which has the characteristic of being "stretchable", simulating natural systems (like blood vessels) as fluid flows through the duct from liquid inlet to liquid outlet. This embodiment of claim 33 provides for the elevating of the stretchable sheet above the object holder (using the stretchable strip as side wall) along the geometric boundary of the defined/constructed duct, while at the same time providing for stretchable side wall (the stretchable strip) thus allowing for widening at the sides, as the stretchable sheet allows for expansion of the upper wall of the duct. These beneficial features are not present nor can they be duplicated using the structures of the prior art with their fixed walled containers.

The remaining dependent claims are patentable either because they depend from allowable base claims or because they introduce further limitations which further distinguish over the prior art.

Office Action's Rejection under 35 U.S.C § 103

Claims 29-30 were rejected by the Office Action under 35 U.S.C. § 103(a) as being unpatentable over Andrevskiy, et al. in view of Freeman. In making this rejection, the Office Action interprets Andrevskiy in the same manner as expressed in connection with the § 102 rejection. In reference to the above arguments, it is restated and argued to be clearly evident that Andrevskiy does not teach the elements of Claim 26 and that the various statements made in the

Office Action themselves express that Andrevskiy does not teach the limitations of the claim. Therefore, Andrevskiy cannot provide the basic elements as intended by the Office Action. As such, the combination of Freeman with Andrevskiy also cannot teach the limitations of the stated claims.

The Office Action states that Claims 31 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrevskiy, et al. in view of Freeman and further interview with Teppke, et al. Again, Applicant strongly contends that Andrevskiy, et al. cannot and does not supply the basic claim limitations of Claim 26 and that the Office Action itself indicates by its very statements that Andrevskiy falls short of literally teaching the limitations of Claim 26. Therefore, the combination of references as suggested by the Office Action cannot and does not teach or render obvious the dependent Claims 31-32.

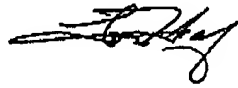
The Office Action again rejects Claims 26-29 and 33 under 35 U.S.C. § 103(a) as being unpatentable over a Hancock, et al. in view of Maracas, et al. In this rejection, the Office Action utilizes Hancock, et al. to teach the basic limitations of Claim 26, asserting that Hancock, et al. comprises a sample preparation compartment having access to ports and a cover formed of transparent material. Then the Office Action utilizes the same argument that it did in connection with the Andrevskiy reference, stating that "since a rail is simply interpreted as a rod-like support structure and the cover inherently contacts the sides of the compartment, the contact of the cover to the sides of the compartment are sufficient to meet the limitations of a rail." Applicant respectfully submits that, as in connection with the assertions made regarding the Andrevskiy reference, the asserted structure of Hancock is not the structure claimed, nor is the resultant combination of references. Therefore, the combination of references as suggested by the Office Action cannot and does not teach or render obvious the Claims 26-29 and 33. Further, the arguments regarding claim 33 are repeated.

CONCLUSION

Accordingly, all claims of the application are believed to be in a condition for allowance and an early notice to such effect is earnestly solicited. However, if Examiner believes that any issues remain unresolved, Applicant invites the Examiner contact the undersigned by telephone.

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Respectfully submitted,



Louis T. Isaf
Reg. No. 29,078
David J. Hayzer Ph.D., J.D.
Reg. No: 43,329
Attorneys for Applicant

WOMBLE CARLYLE SANDRIDGE & RICE
P.O. Box 7037
Atlanta, GA 30357-0037

Tel. 404-962-7523